IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

GHEESA RATHORE VS. STATE OF RAJASTHAN & OTHERS

(S.B. Civil Writ Petition No.1182/2005)

DATE OF ORDER ::: MARCH 1, 2005

P R E S E N T

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. M.S. Singhvi, for the petitioner.

REPORTABLE

BY THE COURT :

Heard learned counsel for the petitioner.

The present litigation has long chequered history. The petitioner is claiming that a quarry license was granted to the petitioner for plot no.83 as back as in 1956. According to the petitioner, license was renewed from time to time and presently, the license is valid upto 31.12.2009. It is also submitted that vide order dated 5.2.1980, plot area of the petitioner's plot was increased to 12758 square feet.

Teja Ram, father of respondent no.8 had quarry license for plot no.75 measuring 140 x 190 feet. According to the petitioner, said Teja Ram became hostile against the petitioner and started creating obstruction in the working of petitioner on plot

no.83. Teja Ram also preferred an appeal before the Additional Director of Mines against the extension of area licensed to the petitioner but the same was dismissed vide order dated 4.1.1982. Appeal against the order dated 4.1.1982 was dismissed by State Government on 8.2.1984. The revision petition filed against the aforesaid orders before the Government of India was also dismissed vide order dated 25.9.1985. Not satisfied with all these orders, said Teja Ram preferred writ petition before this Court being S.B. Civil Writ Petition No.2489/1985 which was also dismissed vide order dated 11.2.1986. Not only this, Teja Ram also filed a suit in the Court of Munsif, Makrana challenging the extension of the area covered by the quarry license of the petitioner but this suit was withdrawn by Teja Ram by saying that he has filed revision petition to the Central Government. The civil suit was, therefore, dismissed as withdrawn on 16.5.1985.

In the year 1993, said Teja Ram instituted another suit despite the fact that he had withdrawn the earlier suit without seeking liberty from the Court for instituting fresh suit. The subsequently filed suit was decreed ex-parte in favour of Teja Ram on 13.8.1996. Against the judgment and decree dated 13.8.1996, the petitioner preferred appeal which is pending. However, no interim order is passed in favour of the petitioner. According to petitioner, even by decree dated 13.8.1996, in no way, Teja Ram or now the

respondent no.8 has been permitted to operate the mine in the area which is covered by the petitioner's license.

The petitioner thereafter submitted a complaint on 3.11.1999 on which the Mines Foreman prepared a report and found that Teja Ram was carrying on illegal excavation. On the basis of this report, notice was issued to Teja Ram by the Mining Engineer, Makrana to show cause why cost of mineral may not be recovered from him and why his quarry license may not be cancelled. Against this notice, Teja Ram filed a civil suit no.39/99 in the Court of A.D.J., Parbatsar which was transferred to the Court of A.D.J. (Fast Track), Parbatsar and was registered as no.127/2004. In that suit, initially an interim order was granted in favour of Teja Ram but that was rejected on 5.6.2004. Teja Ram, therefore, filed appeal against the order dated 5.6.2004 before this Court being S.B.Civil Misc. Appeal No.826/2004 in which an interim order has been granted by this Court in favour of Teja Ram. In the suit no.39/99 (127/2004) filed by Teja Ram, the petitioner was not impleaded as party, therefore, the petitioner moved an application for impleading him as party but that was rejected on 16.9.2004. However, the suit of Teja Ram itself was dismissed by the trial court on 1.10.2004. Against judgment and decree dated 1.10.2004, Teja Ram preferred regular first appeal before this Court being S.B. Civil Regular First Appeal No.647/2004 wherein following order has been

passed by this Court :-

> “Admit. Issue notice of the main appeal as well as of the stay petition.
>
> Meanwhile, the respondents shall not interfere in the mining operation of the appellant's mine no.75 having area of 140' x 190' and the respondents shall not recover any amount from the appellant on account of recovery notice issued against the appellant on the ground of alleged illegal excavation.”

It is submitted by learned counsel for the petitioner that the petitioner has submitted an application for being impleaded as respondent in the said appeal.

Now the grievance of the petitioner is that by taking undue advantage of the order dated 1.11.2004, Teja Ram himself and through his agents started illegal mining.

According to learned counsel for the petitioner, no one has right to excavate the mineral beyond the area licensed and, therefore, Teja Ram or his successor has no right to excavate the mineral from the land for which no license or lease has been granted to them in accordance with law.

According to learned counsel for the petitioner, Teja Ram, who had already died, had no right to

excavate mineral from the area which is covered by the license given to the petitioner.

According to learned counsel for the petitioner, with the help and on the strength of the order passed by this Court dated 1.11.2004, Teja Ram broke open the locks of mining implements which were seized by the mining officers as said Teja Ram was found indulged in illegal mining in petitioner's mine.

According to learned counsel for the petitioner, the petitioner approached the mining department and the police authorities to take action but nobody is taking any action and one department is writing to another department to take action. The petitioner has placed on record several documents to show that the respondent no.8 is indulged in illegal mining in the area which is covered by the license of the petitioner and despite notice, none of the authorities is taking action whereas, as per the provisions contained in Chapter-VII of the Rajasthan Minor Mineral Concession Rules, 1986 (for short “the Rules of 1986”), unauthorised working in the mining area is totally prohibited. The minerals are the property of the State. The State authorities are under obligation to take action against the persons who illegally excavate the minerals or who trespass any land in contravention of the provisions of Rules of 1986. The authority has been given power to seize the property and minerals also and also has been given power to recover the cost of the minerals as well as to impose penalty.

Since the petitioner, after approaching the respondents failed to get any relief in a matter where said Teja Ram lost the battle everywhere, is seeking relief against the respondents no.1 to 7 and, therefore, they may be directed to take action against L.Rs. of Teja Ram including respondent no.8 Dhanna Ram in respect of illegal mining activities and the respondent no.8 may be restrained from excavating the mineral outside the mining area covered by quarry licence no.75.

I have considered the submissions of learned counsel for the petitioner and have perused the documents placed by the petitioner.

Undisputedly, the dispute with respect to the mining area of plot no.75 and plot no.83 is subject matter of litigation between the petitioner and said Teja Ram since 1983. The petitioner got the extension of his mining area and it appears that Teja Ram is claiming more area than which the petitioner is thinking of Teja Ram. It is strange that despite so many threats from Teja Ram, the petitioner did not take any steps to protect his mining area for which he was granted license by the mining department and more particularly, when this Court in writ petition no.2489/1985 clearly observed, after noticing the fact of filing of suit by said Teja Ram in the Court of

Munsif, Makrana on 13.3.1981, that “this Court while sitting in the extraordinary jurisdiction will not delve into intricated questions of facts. This can be better agitated before a Civil Court by leading evidence from both sides”. This Court thereafter dismissed the writ petition by observing that, “...Thus in view of the fact that this involves an inquiry into the fact, I am not inclined to go into that question and leave it to the parties to better agitate the matter before the competent forum for determination of their rights.”.

The petitioner himself was served with a notice dated 7.12.1999 issued by Mining Engineer, Makrana for alleged violation of the terms and conditions of the license and allegation against the petitioner himself was of undercutting operation. The petitioner, therefore, filed a civil suit against this notice in the year 2000. In this suit, an interim order was granted on 16.3.2000 by the trial court maintaining the physical possession of petitioner on quarry no.83 subject to the decree dated 13.8.1996.

The petitioner, as per the facts pleaded in the writ petition, filed suit no.16/2003 for getting relief against the State and Mining Engineer prohibiting them from changing the area of quarry no.83 and an injunction against Teja Ram from interfering with the mining area measuring 12758 square feet of quarry no.83 and further restraining

him from indulging in undercutting. In that suit, the Court passed an interim order on 25.9.2003 and the petitioner was permitted or rather was directed to operate his mines in accordance with judgment and decree dated 13.8.1996 and the defendants were directed not to interfere with the mining area of the petitioner. The petitioner also submitted application under Order 39 Rule 2A C.P.C. alleging breach of order by Teja Ram.

Yet another suit no.10/2004 was filed by the petitioner before Civil Judge (S.D.) Makrana against State, Officers of the Mining Department seeking relief that the locks on the fixed cranes may not be opened.

According to learned counsel for the petitioner, the petitioner is trying to protect his property, mineral as well as mine and for that purpose, he took steps and despite having so many orders in his favour and despite having all the orders against said Teja Ram and his successors, the petitioner is feeling helpless because of the reasons that the respondents are not acting despite having power with them.

Above all facts were mentioned only to show that the petitioner appears to have submitted this writ petition under assumption that the State Machinery can be provided to the petitioner as a tool in his hand

and that too when the matter is pending before the High Court and Civil Courts in various proceedings involving the same dispute where both the parties are claiming their rights since 1985 or even from before that.

The provisions provided under Chapter-VII of the Rules of 1986 are principally for protection of the Government property and incidentally, it may give benefit to the lease/license holders also. It is the duty of the State authorities to prevent illegal mining operation in the entire mining area. Mining operations in the petitioner's mine if carried by unauthorised person than that is also illegal because by this, one is excavating the mineral from the land for which he has not been granted any lease or license or permission under the Rules of 1986. In that situation, loss may be caused to the person who is holding lease or license under the Rules of 1986. In the same way, the boundary disputes are also required to be examined by the mining department under the permissible limit as provided under the Rules. So far as illegal mining operation from the Government land is concerned, the authorities are under obligation to take action and prevent the illegal mining operation and the authorities have no option but to protect the property of the State. Once the lease or license is granted for a mining area under the rules, then the mining department or the officer, who can take action,

may take action against the guilty persons and normally they should take action because by doing so, the authorities will be preventing illegal mining activity from the unauthorised person irrespective of the fact that the area has already been let out or given on license to someone else. But in such case, primarily, it is the duty of the lessee/licensee to protect his mine and mineral as his own personal property. Therefore, in a case where an individual person wants to protect his mine and minerals, then the proper course in the given facts and circumstances may be to approach the civil court when no remedy is available under the Act or the Rules. The powers of the mining authorities under the Rules of 1986 serves the purpose of the Act and the Rules and protects the State interest and empowers the authorities to recover cost of mineral from person involved in illegal mining operation from the person excavating mineral illegally or with the express, implied or tacit consent of the mine allottee. These powers ordinarily are not for the purpose of settling private dispute though the dispute is in relation to the mine area.

This Court as back as in the year 1986 in the writ petition no.2489/1985 filed by Teja Ram observed in the facts of the case that it is better to agitate the matter before the civil court. Teja Ram filed civil suit and though suit was dismissed by the trial court but appeal is pending before this Court and interim

order has been granted by this Court. The petitioner also filed the suit and obtained the interim order, then why this Court should take the task to examine all disputed claims, is not explained.

In view of the fact that the petitioner himself approached the civil court and obtained interim order and there are allegations against the petitioner himself that he is also indulged in undercutting and his allegation against the respondent no.8 is also of illegal undercutting in his mine, this Court cannot hold enquiry about the area of the mine no.75 and mine no.83 for which the matter came up before this Court in the said writ petition no.2489/1985.

Apart from the above, this Court in the facts of this case finds that in this matter, if any direction is given to the mining department to give relief to the petitioner or to take action against the respondent no.8, it will tantamount to virtually usurping the power of Civil Court despite the fact that all appropriate orders in the nature of dispute can well be passed only by civil court. There appears to be no reason for issuing directions to the respondents no.1 to 7 to decide themselves the area of mine no.75 and 83 when the matter is pending before the trial court and before this Court.

Danger of misuse of power given by the statutory

provision is more when one is seeking assistance of those authorities who have summary power to take action. In such situation, the person should approach the Civil Courts and should seek the interim order from the Civil Courts. The Civil Courts are fully empowered to not only pass the interim orders but have full power to implement the interim orders and for which the civil courts even can pass order of police help and the civil court also can pass order of attachment of the property, if there is a chance of damage to the property. There appears to be no reason for this Court to pass any order or directions to the respondents no.1 to 7 by which the respondents no.1 to 7 may either pass order or to take action which may not be appropriate in view of the pending litigation before the Civil Court and High Court.

However, it is made clear that this order does not mean to say that the authorities, who are responsible to maintain law and order situation, can keep their hands tight-folded when there is a reason to take immediate action by the authorities and which may not amount to overreaching the process of the Court.

Accordingly, this writ petition having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya